

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

AO 241 (Rev. 5/85)

United States District Court		District Essex County
Name Timothy George Dykens	Prisoner No. w63485	Case No.
Place of Confinement M.C.I. Cedar Junction		
Name of Petitioner (include name under which convicted) Timothy George Dykens		Name of Respondent (authorized person having custody of petitioner) V. Peter Allen Superintendant
The Attorney General of the State of: Massachusetts		
<i>1st Amended</i> PETITION		
1. Name and location of court which entered the judgment of conviction under attack _____ <u>Lawrence Superior Court, Lawrence Mass</u>		
2. Date of judgment of conviction <u>10-27-97</u>		
3. Length of sentence <u>Life without Parole</u>		
4. Nature of offense involved (all counts) <u>Murder in the First Degree, Attempted Aggravated Rape, and Kidnapping</u>		
5. What was your plea? (Check one)		
(a) Not guilty <input checked="" type="checkbox"/> (b) Guilty <input type="checkbox"/> (c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:		
6. If you pleaded not guilty, what kind of trial did you have? (Check one)		
(a) Jury <input checked="" type="checkbox"/> (b) Judge only <input type="checkbox"/>		
7. Did you testify at the trial?		
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Did you appeal from the judgment of conviction?		
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

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9. If you did appeal, answer the following:

(a) Name of court Supreme Judicial Court

(b) Result Affirmed

(c) Date of result and citation, if known 3-14-03

(d) Grounds raised Constitutional error on note taking, closing of courtroom during jury selection & instructions, Ineffective assistance of counsel.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Essex County Superior Court

(2) Nature of proceeding Motion for new Trial

(3) Grounds raised Ineffective Assistance of Counsel

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Affirmed

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Constitutional error by Judge on note taking
during jury instructions

Supporting FACTS (state *briefly* without citing cases or law) The arbitrary and unequally
applied notetaking procedure differs materially from the standard
notetaking procedures governed by Superior Court Rule 8A.
Failure to give jury proper cautionary instructions, Allowance
of unrestricted notetaking during deliberations.

B. Ground two: Ineffective Assistance of counsel

Supporting FACTS (state *briefly* without citing cases or law) Trial counsel's failure to
object to a prejudicial jury instruction, and to request appropriate
guidelines, and or cautionary instructions. Failure to object
to the unbalanced and unrestricted instructions and failure
to request inspection and/or preservation of the jurors notes

C. Ground three: INEFFECTIVE ASSISTANCE OF COUNSEL

Supporting FACTS (state *briefly* without citing cases or law) TRIAL COUNSELS FAILURE
TO PRESENT A FULL INTOXICATION DEFENSE, AND FAILURE TO CALL
DEFENDANT AND OTHER WITNESSES WAS EQUIVALENT AS A CONCESSION
OF GUILT

D. Ground four: INEFFECTIVE ASSISTANCE OF COUNSEL

Supporting FACTS (state *briefly* without citing cases or law) FAILURE TO MAKE A CLOSING
ARGUMENT ON TWO OF THE INDICTMENTS, AND CONCEDING THE DEFENDANTS
GUILT DURING CLOSING ARGUMENTS.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing ALBERT CONLON 73 N. COMMON, LYNN MA 01902

(b) At arraignment and plea ALBERT CONLON 73 N. COMMON, LYNN MA 01092

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GROUND FIVE. INEFFECTIVE ASSISTANCE OF COUNSEL

Supporting FACTS (state *briefly* without citing cases or law) TRIAL COUNSEL WAS
INEFFECTIVE WHEN HE FAILED TO OBJECT WHEN INSTRUCTIONS
EVISGERATED DEFENDANTS OTHER PERSON THEORY IN INSTRUCTIONS
WHEN HIS WHOLE DEFENSE WAS BASED ON THE THEORY WITHOUT
WARNING.

GROUND SIX COSTITUTIONAL ERROR BY JUDGE BY CLOSING THE COURTROOM

Supporting FACTS (state *briefly* without citing cases or law) THE JUDGE ERRED WHEN HE
CLOSED THE COURTROOM DURING JURY INSTRUCTION, WITHOUT MAKING
ANY FINDINGS AS TO WHY.. AND IMPROVING TRIAL

Supporting FACTS (state *briefly* without citing cases or law) _____

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(c) At trial Albert Conlon 73 N. Common Lynn Ma. 01902(d) At sentencing Albert Conlon 73 N. Common Lynn Ma. 01902(e) On appeal James A Couture 10 S. Main box 63 Belchertown Ma. 01007Bernard Grossberg 99 Summer Street Boston Ma. 02110

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

September 1, 2005
(date)Timothy W. [Signature]
Signature of Petitioner